IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4763 of 2004

to

SPECIAL CIVIL APPLICATION No 4765 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE AKIL KURESHI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

UMAKANT KANTILAL PATEL

Versus

G.P.S.C.

Appearance:

MR NILESH A PANDYA for Petitioner No. 1

MR SK PATEL for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE AKIL KURESHI

Date of decision: 17/01/2005

ORAL ORDER

In this group of petitions, since similar questions of law and facts arise, they have been heard together and are being disposed of by this common order.

2. The petitioners in these petitions, challenge the action of the Gujarat Public Service Commission (GPSC for short) in not calling them for oral interview though they had cleared the written test.

3. It is the case of the petitioners that an advertisement came to be issued on 31st October 2002 calling eligible candidates to apply for various posts. The petitioners applied for the post of Senior Factory Inspector since they possess necessary educational qualifications as well as experience required for the said post. The petitioners were, in fact, permitted to undertake the written test conducted by the GPSC. The result of the test was declared on 24th June 2003 and 45 candidates were declared successful. All the petitioners found their names in the list of successful candidates. They, therefore, were awaiting a call for oral interview. The GPSC, however, did not call the petitioners for oral interview and selected some other candidates which action has aggrieved the petitioners.

4. In response to the notice issued by this Court, affidavit in reply has been filed in each of the petitions. It is stated that the petitioners were declared successful only provisionally. It was made clear that the candidates whose numbers are included in the provisional list do not get any right for being called for interview. It was further clarified that only those candidates who satisfy the requirements of the advertisement and also attain such minimum qualifying standard as the GPSC may fix for different category shall be called for interview. It was further stated that since the petitioners did not attain the qualifying standard fixed by the GPSC, they were not included in the list of candidates who were called for interview.

5. The GPSC has filed further affidavits in each of the petitions. In Special Civil Application No.4763 of 2004, it is stated that against three posts to be filled in from general category candidates, there were 24 candidates in the list of 45 declared provisionally successful. The GPSC has, therefore, decided to call 10 candidates for the 3 vacancies for general category candidates and drew a cut-off line upto 189 marks as qualifying standard for being called for interview. The petitioner had received 184 marks and was, therefore, not called for interview.

5.1 In the further affidavit in reply filed in Special Civil Application No.4764 of 2004, it is stated that the petitioner therein was also a candidate seeking appointment against general category seats and the cut-off line of 189 marks was applied whereas the petitioner had received only 175 marks and he was, therefore, not called for interview.

5.2 In Special Civil Application No.4765 of 2004, in the further affidavit in reply, it is stated by the GPSC that the petitioner was seeking employment against the general category seats and applying the cut-off line of 189 marks, the petitioner was not called for interview as he had received only 169 marks.

6. So far as the factual aspects of the matters are concerned, there is hardly any dispute. It is not the case of the petitioners that any person with less marks belonging to the general category has been called for interview and the petitioners were left out. The short question, therefore, arises is whether the GPSC erred in short-listing the candidates for being called for oral interview. To put it differently, the question is whether the GPSC was required to call for oral interview all candidates who had passed the written test or whether it was permissible for the GPSC to apply higher standard for limiting the number of persons to be called for interview by short-listing the candidates. This issue is no longer res integra. In the case of M.P.Public Service Commission v. Navnit Kumar Potdar, (1994) 6 SCC 293, the Hon'ble Supreme Court in para 8 made the following observations :

"8. The sole purpose of holding interview is to search and select the best among the applicants. It is obvious that it would be impossible to carry out a satisfactory viva voce test if large number of candidates are interviewed each day till all the applicants who had been found to be eligible on basis of the criteria and qualifications prescribed are interviewed. If large number of applicants are called for interview in respect of four posts, the interview is then bound to be casual and superficial because of the time constraint. The members of the Commission shall not be in a position to assess properly the candidates who appear before them for interview. It appears that Union Public Service Commission has also fixed a ratio for calling the candidates for

interview with reference to number of available vacancies."

On the basis of the above observations, the Hon'ble Supreme Court upheld the process of shortlilsting adopted by the M.P.Public Service commission.

7. In the case of State of Punjab v. Manjit Singh, (2003) 11 SCC 559, the Hon'ble Supreme Court made the following observations in para 7 and 8 of the judgment:

"7. Now adverting to the point under consideration, it may be observed that so far as the powers and functions of the Commission in short-listing of candidates are concerned, there can certainly be no doubt about it. Say, for example, 10,000 candidates apply for recruitment to 100 posts, it would obviously not be possible to take full test/examination and interview of such a large number of applicants, though eligible. In that event, short-listing of the candidates by screening out those, in respect of whom it would serve no purpose to call them for further test, may be excluded by adopting the method of screening test. Generally speaking, a ratio of 3 : 5 candidates for one post is normally accepted depending upon the number of seats. Therefore, for 100 posts the selecting body may in order of merit take out about first 500 candidates for further tests/interview. The rest of the candidates would be screened out. No candidate excluded by adopting such a method of short-listing can raise any grievance whatsoever.

8. But for such short-listing as indicated above, it is not necessary to fix any minimum qualifying marks. Any candidate on the top of the list at number 1 down to 500 would obviously constitute the shortlisted zone of consideration for selection. For the purpose of elaboration it may be observed that in case some cut-off marks are fixed in the name of short-listing of the candidates and the number of candidates obtaining such minimum marks, suppose is less than 100, in that event screening test itself will amount to a selection by excluding those who though possess the prescribed qualification and are eligible for consideration but they would be out of the field of consideration by reason of not crossing the cut-off marks as may be fixed by the recruiting body. This would not be a case of short-listing.

> In short-listing, as observed above, any number of candidates required in certain proportion of the number of vacancies, may be shortlisted in order to merit from serial No.1 up to the number of candidates required."

It can thus be seen that the power of the GPSC to shortlist the candidates for being called for interview is well recognized and well accepted. It fact, it is found that it is not desirable to call for oral interview unduly large number of candidates disproportionate to the available vacancies which would be detrimental to conducting effective interviews. In view of this, I do not find that the GPSC has committed any error in short-listing the candidates for being called for interview. As noted earlier, there is no dispute about the fact that there were only three vacancies for general category candidates and the GPSC decided to call 10 candidates out of those who had been declared successful in the written test. For the above purpose, cut-off line of 189 marks in the written test was applied. There is no grievance that this cut-off line was not uniformly applied and that there was any discrimination. The petitioners though had cleared the written test, it was made clear at the outset that the result is provisional and will be called for interview only in case they fulfill the higher standard if so fixed by the GPSC. When the GPSC found it necessary in order to conduct fair interviews to limit the number of candidates for being called for interview and when the petitioners did not fall within the zone so fixed by the GPSC strictly on the basis of the marks received by the candidates, no illegality can be attached to such procedure.

9. In the result, I do not find that the petitioners have made out any case for interference. The petitions are is therefore, rejected. Notice discharged with no order as to costs.

(Akil Kureshi, J.)
(vjn)